RAH v. RAL

HIGH COURT MALAYA, KUALA LUMPUR
EVROL MARIETTE PETERS J
[ORIGINATING SUMMONS NO: WA-24F-190-07-2024]
1 MARCH 2025
[2025] CLJ (JT3)

Abstract – *(i) Embryos, while not legal persons, are not to be treated as ordinary property that can be freely sold, transferred, or disposed of like other assets. Embryos should not be divided as part of matrimonial assets in a divorce or separation, as in this case, without careful consideration of the ethical and moral implications involved. In the absence of a clear agreement between parties regarding the fate of frozen embryos post-divorce, the court will balance the parties' rights. In the case at hand, (a) the applicant's right to procreate was balanced against the respondent's right not to be compelled into parenthood; and (b) the party who primarily bears the financial responsibility for preserving the embryos was granted control, subject to certain conditions; (ii) Monthly child maintenance is determined based on the child's reasonable needs, considering the parents' financial capabilities. Lump sum child maintenance is not permitted under s. 19A of the Guardianship of Infants Act 1961.*

FAMILY LAW: *Custody – Frozen embryos – Applicant wife and respondent husband pursued in vitro fertilisation ('IVF') treatment during subsistence of marriage – Three embryos preserved in frozen state at IVF clinic – Parties divorced but proceeded with IVF process – Implantation of one frozen embryo resulted in birth of child, leaving two frozen embryos at IVF clinic – Application by applicant for sole custody, care, and control of remaining two frozen embryos – Legal status of embryos – Whether embryos possessed personhood – Whether intentions of parties established – Whether consent of both parties necessary for future use of embryos – Whether right to procreate outweighed right to avoid parenthood – Factors considered in addressing issue – Conditions imposed to ensure decision aligns with ethical, medical, and legal considerations*

FAMILY LAW: *Children – Maintenance – Lump sum payment – Applicant wife and respondent husband pursued in vitro fertilisation ('IVF') treatment during marriage – Parties divorced but proceeded with IVF process – Implantation of embryo culminated in birth of child – Claim for child's maintenance – Child's status – Whether lump sum permitted for child maintenance – Whether period payments appropriate – Whether claim for monthly amount justified – Reasonable cost for*

raising child, taking into account basic necessities and essential expenses – Applicable law – Law Reform (Marriage and Divorce) Act 1976, s. 2 – Guardianship of Infants Act 1961, ss. 3 & 19A

FAMILY LAW: *Children – Access – Applicant wife and respondent husband pursued in vitro fertilisation ('IVF') treatment during marriage – Parties divorced but proceeded with IVF process – Implantation of embryo culminated in birth of child – Child's status – Whether husband entitled to access to child*

The applicant wife and the respondent husband had registered their marriage in 2009. In 2014, the parties mutually agreed to pursue *in vitro* fertilisation ('IVF') treatment as a means to have children. Three embryos were then created by fertilising the respondent's sperm with an ovum donated by the applicant's sister. These embryos were then preserved in a frozen state at an IVF clinic. In 2017, however, the marriage between the parties ended in divorce. Despite their separation, they proceeded with the IVF process that they had initiated during their marriage, which involved the implantation of one of their previously frozen embryos, in 2021. This collaborative effort culminated in the birth of their daughter ('child') in 2022. The applicant contended that: (i) although the respondent had initially expressed a strong commitment to actively participate in the child's life following her birth, this engagement had markedly diminished over time; and (ii) the respondent's initial enthusiasm and assurances of support began to wane, resulting in a notable decline in both his physical presence and financial contributions, which were vital for the child's well-being. Hence, the present application by the applicant seeking: (i) sole guardianship, custody, care, and control of the child, along with a lump sum maintenance payment of RM1,440,000; (ii) to change the name of the child; and (iii) the custody, care and control of two frozen embryos that the parties had agreed to fertilise during their marriage. The respondent did not contest to the applicant's claim for sole guardianship, custody, care, and control of the child and raised no objection to the applicant's request to change the child's name.

The issues that arose were: (i) whether the applicant was entitled to sole custody, care, and control of the remaining two frozen embryos. On this issue, the applicant asserted that: (a) she should be granted custody of the frozen embryos as she had consistently paid for their storage; and (b) her financial commitment to preserving the frozen embryos over time demonstrated her vested interest in their future use. The respondent, on the other hand, argued that: (c) the embryos were fertilised during their marriage, a period when they shared mutual intentions regarding family planning. However, now that they were divorced, those intentions were no longer valid; and (d) if the applicant were granted custody, she could choose to implant the frozen embryos, which might result in the birth of children for

whom he could be held financially responsible. This, according to the respondent, would be unfair as it would impose future parental obligations upon him without his consent; (ii) whether a lump sum was permitted for child maintenance; (iii) whether child maintenance of monthly RM7,500 was justified; and (iv) whether the respondent was entitled to access to the child.

Held (allowing application in part):

(1) There is no Malaysian case law addressing the status of embryos, especially frozen ones, in cases where a couple has separated or divorced. Although embryos do not have legal personhood, they also should not be treated as ordinary property that can be freely sold, transferred, or disposed of like other assets. Embryos should not be divided as part of matrimonial assets in a divorce or separation nor should they be subject to standard inheritance, contract, or family laws without careful consideration of the ethical and moral implications involved. (paras 33 & 41)

(2) The court had to weigh and balance the rights, interests and obligations of both parties. While the applicant had the fundamental right to procreate, it had to be weighed against the respondent's right not to be compelled into parenthood. Given that embryos do not possess legal personhood and are, at most, potential human beings, the respondent could not be compelled to become a father in the future. (paras 57, 63 & 68)

(3) The applicant should be given the prerogative to decide what should be done with the frozen embryos, particularly because she bore the primary financial responsibility for their freezing and storage. The financial contribution she had towards the preservation of the frozen embryos was significant, as it indicated her intent and commitment toward their preservation, possibly for future reproductive use. (para 75)

(3a) In granting control of the frozen embryos to the applicant, the following conditions had been imposed on her to ensure that the decision aligned with ethical, medical, and legal considerations: (i) the respondent would not be liable for any financial obligations associated with the frozen embryos. This included storage costs, medical procedures, and any potential future use. This condition would protect the respondent from being burdened with unforeseen expenses or responsibilities that he did not voluntarily assume; and (ii) the applicant was legally prohibited from seeking financial support from the respondent for any child born from the frozen embryos. (para 77)

(4) The Law Reform (Marriage and Divorce) Act 1976 ('LRA') did not apply in this case due to the child's illegitimate status. Under s. 2 of the LRA, an illegitimate child is recognised only if he/she is the biological child of either party to the marriage and had been legally adopted under a valid adoption order. Since the child in question did not fulfil these criteria, the provisions of the LRA were inapplicable. Given that the LRA did not govern the matter, the appropriate legal framework was the Guardianship of Infants Act 1961 ('GIA'). The GIA provides guidance on issues related to the guardianship and welfare of children, including illegitimate children. The foundation for addressing the child's provision was in s. 3 of the GIA. (paras 82, 84 & 85)

(5) A lump sum payment was not warranted in this case as: (i) the child was only three years old, and her financial needs may change over time due to factors such as education, healthcare, and daily living expenses. Periodic payments, on the other hand, provide flexibility, allowing for adjustments based on the child's evolving needs and the parties' financial circumstances; and (ii) if the applicant were to be granted a substantial lump sum upfront, there would be a significant risk that the funds might not be managed prudently to sustain the child's needs throughout their upbringing. Such a large sum could be misused or diverted for purposes unrelated to the child's welfare. Periodic payments offer a more structured and sustainable approach, ensuring that financial support remains available and is allocated appropriately as the child's needs evolve over time. In any event, lump sum payment for child maintenance was not permitted by s. 19A of the GIA. (paras 86, 87 & 91)

(6) Notwithstanding the court's rejection of the request for a lump sum payment, it was imperative for the respondent to pay monthly maintenance for the child. Bearing in mind that the child was only three years old, the applicant's claim for RM7,500 monthly was inflated and unreasonable. Taking into account basic necessities such as food, clothing, healthcare, education, and other essential expenses, and the fact that the applicant, being holder of a doctorate in cognitive and behavioural therapy and therefore having the capacity to generate income and contribute to the child's financial support, a monthly sum of RM1,500 as child maintencance seems reasonable and is so ordered. This amount shall be subject to an annual increment of 10%, and the obligation shall continue until the child reaches the age of 18 or completes her tertiary education for her first degree. (paras 93, 95, 108 & 109)

(7) The respondent's request for access to the child should be granted in the following manner: (i) for the next six months from the date of this decision, the respondent will be granted supervised physical access from 11am to 3pm every alternate Saturday and Sunday at a place to be agreed to by the parties; and (ii) thereafter, the respondent will be granted unsupervised physical access from 11am to 3pm every alternate Saturday and Sunday. (para 111)

Obiter:

(1) Courts are tasked with interpreting and applying the law, but deciding the fate of frozen embryos – whether they should be implanted, donated, preserved, or destroyed – required moral and ethical considerations that vary significantly among individuals, cultures, and religions. While courts are not designed to serve as moral arbiters, there are circumstances in which considerations of beneficence must be addressed. Legal decisions often intersect with ethical concerns, particularly in cases involving vulnerable populations, medical care, or fiduciary duties. In such instances, the law may require courts to weigh principles of fairness, compassion, and societal well-being, even if their primary function remains the interpretation and application of legal statutes. Thus, while morality alone does not dictate judicial outcomes, there are moments when the pursuit of justice necessitates engagement with ethical imperatives. (paras 72 & 73)

(2) It was essential to highlight the urgent need for legislative intervention in Malaysia regarding embryo protection and assisted reproductive technology. As assisted reproduction becomes increasingly common in Malaysia, it was crucial for Parliament to enact clear and comprehensive legislation that provides legal certainty and protection in this evolving field. Beyond IVF and embryo protection, the legal framework should also address critical issues related but not limited to embryo freezing and storage, posthumous use of embryos, embryo research, egg and sperm donation, embryo adoption, gestational and traditional surrogacy, parental rights and legal parentage, and even cross-border surrogacy. (paras 79 & 81)

Case(s) referred to:

Attorney-General's Reference (No. 3 of 1994) [1998] AC 245 ***(refd)***
Davis v. Davis 842 SW2d 588, 597 ***(refd)***
Dobbs v. Jackson Women's Health Organisation 142 S Ct 2228 (2022) ***(refd)***
Jasvir Singh v. State of Punjab (2014) Cri LJ 2282 ***(refd)***
LePage v. Centre for Reproductive Medicine (SC-2022-0515) ***(refd)***
Paton v. British Pregnancy Advisory Service Trustees [1979] QB 276 ***(refd)***
R v. C [2007] EWCA Crim 2016 ***(refd)***

A *Roe v. Wade 410 US 113 (1973)* ***(refd)***
Suchita Srivastava & Anor v. Chandigarh Administration (2009) 14 SCR 989 ***(refd)***
Ted Jennings Applicant v. Human Fertilisation And Embryology Authority [2022] EWHC 1619 (Fam) ***(refd)***

Legislation referred to:
B Federal Constitution, art. 5(1)
Guardianship of Infants Act 1961, ss. 3, 19A
Law Reform (Marriage and Divorce) Act 1976, ss. 2, 93(2), 95

Constitution [India], art. 21

For the applicant - Sangeet Deo, Tan Chee Kian & Harkiranjit Kaur; M/s Karpal Singh
C *& Co*
For the respondent - Sukhdev Singh; M/s Azlan Shah Sukhdev & Co

Reported by Lina E

JUDGMENT

D

Evrol Mariette Peters J:

Introduction

[1] This was an application ("this application") by the applicant-wife seeking sole guardianship, custody, care, and control of the child in question, along with a lump sum maintenance payment of RM1,440,000. She also requested that the child's name be changed. In addition, the applicant sought custody, care and control of two frozen embryos that the applicant-wife and respondent-husband had agreed to fertilise during their marriage.

F **[2]** In view of the privacy of the parties and sensitivity of issues in these proceedings, the applicant, respondent, and the child in question have been anonymised in this judgment respectively as RAH, RAL, and RAS.

The Factual Background

G **[3]** The applicant, 50 and the respondent, 46 (collectively "the parties"), at the time of the hearing of this application, registered their marriage in February 2009.

[4] In October 2014, the parties mutually agreed to pursue *in vitro* fertilisation (IVF) treatment as a means to have children. During this process, three embryos were created by fertilising the respondent's sperm with an ovum donated by the applicant's sister. These embryos were then preserved in a frozen state at an IVF clinic ("the IVF Clinic"), marking a significant step in their journey towards parenthood.

I

[5] In 2017, however, the marriage between the applicant and the respondent ended in divorce. Despite their separation, they proceeded with the IVF process they had initiated during their marriage, which involved the implantation of one of their previously frozen embryos in 2021. This collaborative effort culminated in the birth of their daughter ("the child") in February 2022.

[6] The applicant contended that although the respondent had initially expressed a strong commitment to actively participating in the child's life following her birth, this engagement had markedly diminished over time, leading to concerns about the respondent's overall involvement and support. The applicant highlighted that the respondent's initial enthusiasm and assurances of support began to wane, resulting in a notable decline in both his physical presence and financial contributions, which were vital for the child's well-being.

[7] Consequently, the applicant deemed this diminishing interest and support as a significant factor prompting this application, which was filed in in July 2024.

The Issues

[8] From the outset, the respondent informed the court that he was not contesting the applicant's claim for sole guardianship, custody, care, and control of the child. He also raised no objection to the applicant changing the child's name.

[9] Hence, the only issues for this court to address were as follows:

(i) whether the applicant was entitled to sole custody, care, and control of the remaining two frozen embryos. In examining this broader issue, it was essential to consider the principles of personhood, autonomy, and beneficence. Additionally, resolving this matter required an assessment of the timeline for embryo usage, along with the following key sub-issues:

   (a) the legal status of embryos and whether they possess personhood;

   (b) whether the parties' intentions were clearly established;

   (c) whether both parties' consent was necessary for future use of the embryos; and

   (d) whether the right to procreate outweighed the right to avoid parenthood.

(ii) in addressing the issue of child maintenance, the court had to address the following issues, namely:

(a) whether a lump sum was permitted for child maintenance;

(b) whether child maintenance of monthly RM7,500 was justified; and

(iii) whether the respondent was entitled to access to the child.

[10] The application was partially granted, with the applicant receiving control over the remaining two frozen embryos. Additionally, the respondent, who was granted limited access to the child, was ordered to pay monthly child maintenance of RM1,500, subject to a 10% increment.

Contentions, Evaluation, And Findings

Control Of The Frozen Embryos

Timelines Of The Use Of The Embryos

[11] In the present case, the issue concerning the embryos needed to be analysed within three distinct timelines, each representing a critical phase in their legal and ethical consideration. Compartmentalising the issue in this manner allowed for a clearer understanding of the circumstances surrounding their creation, status, and future implications.

[12] First timeline (2014) – the first timeline commenced in 2014 when the embryos were initially created during the subsistence of the marriage between the parties. At that time, the parties had undertaken the IVF process as part of their reproductive plans, with mutual consent and without any legal restrictions in Malaysia governing such procedures.

[13] Although Malaysia lacks specific legislation regulating IVF treatments, there are no prohibitions against such practice, particularly for non-Muslim couples. Although the ovum did not belong to the applicant, there was no legal or ethical controversy surrounding the fertilisation process that led to the creation of the three embryos. Their existence at this stage was a natural outcome of a lawful and medically recognised procedure conducted within the framework of the couple's marital relationship.

[14] Second timeline (2021) – the second timeline, which commenced in 2021, was related to the point when the first embryo was implanted into the applicant, ultimately leading to the birth of the child. This phase presented an unusual and complex situation, as the implantation occurred four years after the parties had legally divorced.

[15] In my view, this was an unconventional decision, as it is uncommon for divorced individuals to make joint reproductive choices, especially when their marital relationship has already been legally dissolved.

[16] However, in this case, despite the dissolution of their marriage, the implantation proceeded with the respondent's consent. Such implantation resulted in the birth of the child, whose welfare and maintenance have now become the central issue in this case. The applicant sought financial support for the child, arguing that the respondent, having consented to the implantation, was obliged to bear the financial responsibility for the child's upbringing. This unique set of circumstances distinguished the present case from conventional disputes over child maintenance, as it involved reproductive choices made long after the dissolution of marriage.

[17] While it was not illegal for non-Muslims to have children outside of marriage, in my view, a divorced couple choosing to conceive a child out of wedlock disrupts the established legal framework governing parental rights and responsibilities. Marriage provides a structured system for determining obligations such as inheritance rights and legitimacy, ensuring that a child's legal status is clear. In contrast, a child born post-divorce without the foundation of marriage may face uncertainties in parental recognition, financial support, and social identity. Public policy aims to prevent these ambiguities by reinforcing the importance of children being born within legally recognised unions.

[18] However, the reality remained that, regardless of the circumstances surrounding the child's conception, the applicant and the respondent had brought this child into the world, and that fact is irreversible. The legal and ethical implications of their decision must now be addressed pragmatically, as the welfare and best interests of the child must take precedence over any disputes between the parties. Regardless of whether the child was born within or outside of marriage, the legal system is obligated to ensure that the child's rights and needs are fully protected.

[19] Given this, the court had to turn its attention to the key issues of guardianship, custody, care and control, and maintenance of the child. Ultimately, while the circumstances leading to the child's birth may be unconventional, the court's paramount duty was to ensure that the child was not disadvantaged as a result.

[20] Third timeline (2024) – the third timeline commenced in 2024 in relation to the present dispute, where the applicant sought custody, care and control of the two remaining frozen embryos ("the frozen embryos"), despite the respondent's opposition. While the respondent had previously consented to the implantation of the first embryo – resulting in the birth of the child – he was now firmly against allowing the applicant to use the frozen embryos for any future reproductive purposes. This disagreement raised significant legal and ethical questions regarding reproductive autonomy, parental consent, and the potential financial and legal responsibilities that may arise from the use of the frozen embryos.

[21] The respondent's primary concern was that if the applicant proceeds with implanting the frozen embryos and should they develop into children, he may be held legally accountable for their financial maintenance. Given that he no longer consented to the use of the frozen embryos, he feared that allowing the applicant to unilaterally proceed would expose him to unwanted legal obligations.

[22] The respondent's position highlighted a crucial legal issue, namely, whether prior consent to IVF and embryo creation extended to future implantation, particularly when circumstances have changed – such as in this case, where the parties have been divorced and have no ongoing marital relationship.

[23] This situation presented a complex dilemma, where on one hand, the applicant had asserted her right to use the frozen embryos, possibly viewing them as her last opportunity for biological children. On the other hand, the respondent argued that his lack of consent for future use of the frozen embryos should be respected, as he did not wish to assume parental responsibility for additional children conceived after the end of the marriage.

[24] The court, therefore, had to balance these conflicting rights, taking into account legal principles on reproductive autonomy, contractual obligations, and the potential implications of forcing a person into parenthood against his will.

The Legal Status Of Embryos And Whether They Possess Personhood

[25] The principle of personhood required this court to consider whether embryos possess legal recognition as persons. This inquiry would inevitably reignite the longstanding debate on when life begins – a complex issue influenced by medical, religious, and ethical perspectives.

[26] Some argue that life begins at conception, granting the embryo moral status from the moment of fertilisation. From an Islamic perspective, however, life is believed to begin at ensoulment, traditionally recognised as occurring at 120 days in the womb. Another perspective holds that life begins only at viability or birth, emphasising the developmental milestones necessary for independent survival. This ongoing debate would influence legal frameworks worldwide, with different jurisdictions adopting varying approaches to the recognition of foetal rights.

[27] In English law, viability, which is the stage at which a foetus can survive outside the womb, has been acknowledged as legally significant, though it does not confer personhood. A key case addressing this issue is *Attorney-General's Reference (No. 3 of 1994)* [1998] AC 245, where the House of Lords considered whether an unborn child could be the victim of a

criminal offence. The court ruled that a foetus does not have legal personhood but recognised that viability plays a role in legal considerations, particularly in cases involving harm to an unborn child.

[28] Similarly, in *R v. C* [2007] EWCA Crim 2016, the court examined foetal viability in the context of late-term abortion and medical ethics. While reaffirming that personhood begins at birth, the case highlighted the legal significance of viability, generally set at 24 weeks, as defined by the UK Infant Life (Preservation) Act 1929. The Infant Life (Preservation) Act 1929 criminalised the intentional destruction of a foetus capable of being born alive, further underscoring the legal weight attached to viability.

[29] Additionally, in *Paton v. British Pregnancy Advisory Service Trustees* [1979] QB 276, the court confirmed that a foetus does not have independent legal rights. However, viability remains a key factor in legal and medical decision-making, influencing rulings on abortion, foetal harm, and reproductive rights.

[30] In Malaysia, legal parental responsibilities and rights come into effect only once a child is born, and there is no recognition for embryos as children in the relevant family law legislation for non-Muslims.

[31] The only points of reference that we currently have in Malaysia are guidelines, namely Standards for Assisted Reproductive Technology Facility (Embryology Laboratory and Operation Theatre) issued by the Ministry of Health, and Guideline of the Malaysian Medical Council On Assisted Reproduction.

[32] Consequently, disputes over embryo ownership, control, and future use must be resolved based on broader legal principles such as contract law, consent, and ethical considerations. While the legal framework remains ambiguous, the moral and philosophical debate surrounding the beginning of life cannot be disregarded, as it has significant implications for reproductive rights, bioethics, and family law.

[33] There is also no Malaysian case law addressing the status of embryos, especially frozen ones, in cases where a couple has separated or divorced. As a result, this is a novel issue, and any legal reference must be drawn, if necessary, from case law in foreign jurisdictions.

[34] While the prevailing view is that embryos do not have legal personhood, it was noteworthy that on 16 February 2024, the Alabama Supreme Court issued a landmark ruling in *LePage v. Centre For Reproductive Medicine* (SC-2022-0515).

[35] The case involved several sets of parents who created embryos through IVF and stored them at the centre for reproductive medicine. A hospital patient wandered into the cryogenic nursery where the embryos were stored and removed several, resulting in their destruction. The parents filed a lawsuit against the centre and the hospital, seeking damages under Alabama's Wrongful Death of a Minor Act and asserting common-law claims of negligence. The trial court dismissed both claims, ruling that the embryos did not qualify as "persons" or "children" under the law, making a wrongful-death claim inapplicable. On appeal, the Supreme Court of Alabama reversed the dismissal of the wrongful death claims, holding that frozen embryos created through IVF qualify as "unborn children" under the Wrongful Death of a Minor Act, setting a significant legal precedent. However, the court upheld the dismissal of the negligence and wantonness claims as moot, in light of its ruling on wrongful death.

[36] This decision in *LePage v. Centre For Reproductive Medicine* allows for wrongful death lawsuits in cases of embryo destruction or mishandling, granting embryos a level of legal protection typically reserved for living persons. By extending legal personhood to embryos outside the womb, the ruling challenges long-standing legal and medical definitions of when life begins, potentially influencing similar interpretations in other states of the US.

[37] Beyond its legal implications, the decision in *LePage v. Centre For Reproductive Medicine* raised concerns about its impact on IVF treatments and reproductive healthcare. Fertility clinics frequently store frozen embryos, some of which are later discarded or donated for research. If embryos are legally recognised as persons, clinics and prospective parents may face legal risks, leading to higher costs, stricter regulations, or reduced access to fertility treatments. More broadly, this ruling highlights the ongoing debate over when life begins, with some viewing it as a victory for foetal rights while others see it as a step toward broader restrictions on reproductive healthcare, including abortion and contraception. The long-term effects of this decision on medical practices, legislative policies, and reproductive rights, however, remain uncertain.

[38] One also cannot ignore the implications of the decision of the US Supreme Court in *Dobbs v. Jackson Women's Health Organisation* 142 S Ct 2228 (2022). In overturning the landmark case of *Roe v. Wade 410* US 113 (1973), the decision has had far-reaching implications beyond abortion rights by allowing individual states in the US to define when life begins and legislate accordingly. As a result, some states in the US have introduced or reinforced laws granting legal personhood to embryos and foetuses, raising complex legal and ethical concerns, and particularly regarding reproductive technologies like IVF.

[39] If embryos are legally recognised as persons, their storage, use, and potential destruction could be subject to stricter regulations, limiting individuals' ability to make decisions about unused embryos and potentially requiring mutual parental consent for their use. This shift has reignited debates on foetal rights, reproductive autonomy, and the broader legal implications of defining life from the moment of fertilisation.

[40] While Malaysia does not currently recognise embryos as having legal personhood, the decisions in both *Dobbs v. Jackson Women's Health Organisation* and *LePage v. Centre For Reproductive Medicine* have highlighted how legal definitions of life may evolve based on shifting political and ideological landscapes. If similar debates were to emerge in Malaysia, they could influence policies on reproductive rights, IVF regulations, and even abortion laws. These cases underscore the importance of having clear legal guidelines on the status of embryos, as uncertainty can lead to contentious disputes over their use and ownership. The rulings in both *Dobbs v. Jackson Women's Health Organisation* and *LePage v. Centre For Reproductive Medicine* serve as cautionary examples of how legal frameworks can shape – and in some cases, restrict – reproductive decision-making, potentially impacting individuals' rights and medical advancements in assisted reproduction. Hence, the curtain may not have fallen on the debate, as evolving scientific advancements, ethical considerations, and legal perspectives continue to shape and challenge our understanding of when life truly begins.

[41] Be that as it may, although embryos do not have legal personhood, in my view, they also should not be treated as ordinary property that can be freely sold, transferred, or disposed of like other assets. In my view, this distinction means that embryos should not be divided as part of matrimonial assets in a divorce or separation, nor should they be subject to standard inheritance, contract, or family laws without careful consideration of the ethical and moral implications involved.

[42] Since an embryo is neither a person nor property, from the outset, I advised counsel that terminologies such as "custody" and "possession" are inappropriate, as they imply either parental rights or ownership – neither of which accurately reflects the legal and ethical status of an embryo.

[43] Instead, the term "control" should be employed, as it more precisely conveys the authority to make decisions regarding the embryo's disposition without attributing personal or property rights. This distinction is essential to ensure clarity in legal discussions and to align with established legal and ethical frameworks governing reproductive materials.

Whether Parties' Intentions Were Clearly Established

[44] The key issue was determining the parties' original intention regarding the future of the frozen embryos at the time of their creation.

[45] Fertility clinics commonly require couples to sign agreements addressing various key issues related to embryo storage and use. These agreements typically cover aspects such as the duration of embryo storage, whether embryos may be used for training purposes, and the legal parentage of a child conceived using donated eggs, sperm, or embryos, particularly when the couple is unmarried. Additionally, they outline provisions for handling the embryos in cases of death, disputes, or mental incapacity, ensuring clarity and preventing future legal conflicts.

[46] Neither party had presented any documentation to confirm his or her agreed-upon intent, nor had they provided any records from the IVF Clinic specifying what should happen to the frozen embryos in the event of their separation or divorce. If such an agreement or document had specified the course of action in cases of divorce, death, or dispute, the court would be inclined to uphold its terms, provided they were both ethically and legally enforceable.

[47] The case of *Davis v. Davis* 842 SW2d 588, 597 (Tenn 1992) was a landmark US legal decision that addressed the disposition of frozen embryos where there was no written agreement. The husband and wife in that case had undergone IVF and stored embryos for future use, but before implantation occurred, they divorced. A dispute arose when the wife wanted to keep the embryos for implantation or donation, while the husband opposed their use and sought their destruction, arguing that he did not wish to be forced into parenthood.

[48] The Tennessee Supreme Court ruled in favour of the husband, holding that the right not to procreate outweighed the right to procreate in such cases. The ruling set a significant legal precedent, emphasising that the parties' original intention regarding embryo storage and future use should be carefully documented.

Whether Both Parties' Consent Was Necessary For Future Use Of The Embryos

[49] Since no agreement or documentation was signed regarding future use of the frozen embryos, the key issue that followed was whether consent of both parties would now be required for their use.

[50] Although no evidence was presented regarding the intended disposition of the frozen embryos in the event of divorce or separation, it was undisputed that the respondent had consented to the implantation of one of the embryos four years after the divorce, resulting in the birth of the child.

[51] The key issue, then, was whether the respondent's prior consent to the implantation of the first embryo – which led to the birth of the child– could be interpreted as implicit consent for the use of the remaining frozen

embryos. After all, despite their divorce, the respondent had permitted the applicant to proceed with the implantation, ultimately resulting in the child's birth.

[52] On the issue of consent, a case that is worth noting is *Ted Jennings applicant v. Human Fertilisation and Embryology Authority* [2022] EWHC 1619 (Fam), where a 38-year-old widower won a landmark legal case granting him the right to have a child *via* surrogacy using the last remaining embryo he created with his late wife. Jennings and his wife, Ms Choya, had undergone fertility treatment after struggling to conceive, but Ms Choya tragically passed away while pregnant with twins in 2019. The UK Human Fertilisation and Embryology Authority (HFEA) initially rejected Jennings's request to use the embryo for posthumous surrogacy, citing the absence of written consent from Ms Choya.

[53] The Family Division of the UK High Court, however, ruled in Jennings's favour, finding that the couple had not been given adequate opportunity to provide such consent. Justice Theis in that case concluded that, based on the available evidence, Ms Choya would have consented had she been properly informed and consulted by the clinic. In the following passage, Her Ladyship stated:

> Turning to the issue of Ms Choya's consent I am satisfied that, in the circumstances of this case, **the court can infer from all the available evidence that Ms Choya would have consented** to Mr Jennings being able to use their partner-created embryo in treatment with a surrogate in the event of her death. This is being considered in the context where, in my judgment, she had not been given relevant information and/or a sufficient opportunity to discuss it with the clinic.
>
> (emphasis added)

[54] While not directly applicable to the present case, *Ted Jennings applicant v. Human Fertilisation And Embryology Authority* underscored the crucial requirement of obtaining both parties' consent for the future use of frozen embryos.

[55] The applicant asserted that she should be granted custody of the frozen embryos on the basis that she had consistently paid for their storage. She further argued that her financial commitment to preserving the frozen embryos over time demonstrated her vested interest in their future use. From her perspective, this ongoing responsibility entitled her to sole control over the frozen embryos, including the decision on whether to proceed with implantation.

[56] The respondent, on the other hand, opposed this request, arguing that he should not be held to bear the financial and legal burden of potential future children. He pointed out that the embryos were fertilised during their marriage, a period when they had shared mutual intentions regarding family

planning. However, now that they were divorced, he contended that those intentions were no longer valid. He further argued that if the applicant were granted custody, she could choose to implant the frozen embryos, which might result in the birth of children for whom he could be held financially responsible. In his view, this would be unfair, as it would impose future parental obligations upon him without his consent.

[57] This lack of documentation to indicate the intention of the parties on how the frozen embryos should be treated in the future had left the fate of such embryos to the court. As such, the court had to weigh and balance the rights, interests and obligations of both parties.

Whether The Right To Procreate Outweighed The Right To Avoid Parenthood

[58] Although the applicant sought control over the frozen embryos, her exact intentions remained unclear. It was uncertain whether she wished to use them for the purpose of having more children either by herself or through a surrogate, or if she intended to discard or donate the frozen embryos. In my view, this distinction was crucial because the legal and ethical implications differ significantly depending on whether the frozen embryos are to be used for procreation or simply disposed of.

[59] If the applicant wanted to use the frozen embryos to have children, either by carrying the pregnancy herself or through a surrogate, the case would involve a delicate balance between competing rights. On one hand, she may argue for her right to procreate and use the frozen embryos to fulfil her reproductive goals. On the other hand, the respondent asserted his right not to be forced into parenthood against their will.

[60] Malaysia's legislative framework does not explicitly recognise a right to procreate. However, guidance can be drawn from Indian jurisprudence, where courts have affirmed this right under art. 21 of the Constitution of India. In cases such as *Suchita Srivastava & Anor v. Chandigarh Administration* [2009] 14 SCR 989, [2009] 9 SCC 1 and *Jasvir Singh v. State of Punjab* [2014] Cri LJ 2282, the Indian Judiciary has interpreted the right to procreate as an essential aspect of personal liberty and dignity, reinforcing its constitutional protection. Article 21 of the Constitution of India reads:

> Article 21 - Protection of life and personal liberty
>
> No person shall be deprived of his life or personal liberty except according to procedure established by law.

[61] Article 21 of the Indian Constitution is reflected in art. 5(1) of the Federal Constitution which reads:

> Article 5 - Liberty of the person
>
> (1) No person shall be deprived of his life or personal liberty save in accordance with law.

[62] It can be confidently stated, therefore, that the right to procreate is encompassed within art. 5 of the Federal Constitution. Additionally, this right is explicitly recognised in art. 16(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and is also implicitly protected under art. 12 of the Universal Declaration of Human Rights (UDHR), both of which read:

> CEDAW
>
> Article 16
>
> (e) The same rights to decide **freely and responsibly on the number and spacing of their children** and to have access to the information, education and means to enable them to exercise these rights;
>
> ***
>
> **UDHR**
>
> Article 12
>
> No one shall be subjected to **arbitrary interference with his privacy, family**, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks
>
> (emphasis added)

[63] While the applicant had the fundamental right to procreate, it had to be weighed against the respondent's right not to be compelled into parenthood.

[64] In this case, the fertilisation of the ovum and sperm occurred during the marriage, at a time when both parties had envisioned a shared future. However, after their divorce, an unusual decision was made – the respondent allowed the applicant to implant one of the embryos, despite their divorce.

[65] Although the respondent was undeniably the biological father of the child, he had no intention of assuming a paternal role in the child's life. He explicitly stated that his agreement to the implantation was based on several reasons. First, he claimed that the applicant had expressed an intention to become an escort, and that he believed that having a child would dissuade her from pursuing that path. Secondly, he was aware that the applicant had surpassed the age of natural fertility and would likely be unable to conceive conventionally with a male partner in the future. Thirdly, he did not want the significant costs incurred in producing the embryos through IVF to go to waste. Lastly, despite their differences, he still wished the best for the applicant and hoped that proceeding with the implantation would be in her best interest.

[66] Regardless of the good intentions of the respondent behind the decision to allow the applicant to implant the first embryo four years after their divorce, the court emphasised that once the child was born, there was no way to reverse the situation. As a biological parent, the respondent was legally obligated to provide financial support, even if he wished to distance himself from fatherhood. This ruling reinforced the principle that parental responsibility is not contingent on personal intentions but rather on the undeniable fact of the child's existence.

[67] The respondent had raised concerns that the applicant intended to use frozen embryos to conceive children, thereby imposing financial obligations on the respondent in the form of child maintenance. This suggested that the respondent believed that the applicant's actions were not driven solely by the desire for parenthood but rather as a means to secure financial support. The respondent viewed this as a potential misuse of the legal and biological relationship between a parent and child, turning it into a financial burden rather than a voluntary responsibility.

[68] Given that embryos do not possess legal personhood and are, at most, potential human beings, the respondent could not be compelled to become a father in the future. Neither the legal system nor this court has the authority to impose such an obligation on the respondent.

[69] Importantly, the legal system does not have the capacity to compel someone to embrace the full scope of parenthood. While financial obligations, such as child support, can be legally enforced, the court cannot mandate the deeper aspects of parenting, such as love, care, and guidance.

[70] As such, it was not upon this court to force the respondent to become a father in future.

[71] While this court was not in a position to force the respondent into fatherhood, the court was also not in a position to compel the applicant to discard or destroy the frozen embryos as in my view, they were potential human beings.

[72] Furthermore, the question of what should be done with the frozen embryos extended beyond a mere legal ruling; it was deeply rooted in moral, ethical, and personal beliefs of the parties. Courts are tasked with interpreting and applying the law, but deciding the fate of frozen embryos – whether they should be implanted, donated, preserved, or destroyed – required moral and ethical considerations that vary significantly among individuals, cultures, and religions.

[73] At this juncture, it was crucial to state that while courts are not designed to serve as moral arbiters, there are circumstances in which considerations of beneficence must be addressed. Legal decisions often

intersect with ethical concerns, particularly in cases involving vulnerable populations, medical care, or fiduciary duties. In such instances, the law may require courts to weigh principles of fairness, compassion, and societal well-being, even if their primary function remains the interpretation and application of legal statutes. Thus, while morality alone does not dictate judicial outcomes, there are moments when the pursuit of justice necessitates engagement with ethical imperatives.

[74] Malaysia's legal system strongly reflects Lord Devlin's (1905-1992) theory that the law must enforce morality to maintain social cohesion. In his 1959 lecture, The Enforcement of Morals and his 1965 book '*The Enforcement of Morals*', Devlin, drawing on the principle of legal moralism, argued that society is bound by a shared moral code, and if this code deteriorates, the very fabric of society is at risk of unravelling. This perspective is evident in Malaysia's legal framework, where strict regulations on drug use, pornography, prostitution, and abortion prioritise moral preservation over individual freedoms. By upholding collective morality through legal enforcement, Malaysia has aligned with Devlin's belief that the law serves as a guardian of societal values, ensuring stability and preventing moral decline.

[75] Given that embryos exist in a legal and ethical grey area – being neither fully recognised as persons nor mere property – I was of the view that the applicant should be given the prerogative to decide what should be done with the frozen embryos, particularly because she bore the primary financial responsibility for their freezing and storage. The financial contribution she had towards the preservation of the frozen embryos was considered significant, as it indicated her intent and commitment towards their preservation, possibly for future reproductive use.

[76] I had also considered that, although the respondent had consented to the applicant having at least one embryo implanted after their divorce, he objected to any form of future implantation of the frozen embryos.

[77] Hence, in granting control of the frozen embryos to the applicant, the following conditions have been imposed on the applicant to ensure that the decision aligned with ethical, medical, and legal considerations:

(i) exemption of the respondent from financial responsibility – the respondent would not be liable for any financial obligations associated with the frozen embryos. This included storage costs, medical procedures, and any potential future use. This condition would protect the respondent from being burdened with unforeseen expenses or responsibilities that he did not voluntarily assume;

(ii) prohibition on seeking future financial support – the applicant was legally prohibited from seeking financial support from the respondent for any child born from the frozen embryos. This condition reinforced the principle that parenthood should not be imposed on an unwilling party. It also ensured that the respondent's decision not to participate in the child's upbringing would be legally upheld, preventing future disputes over parental obligations. In essence, the respondent would be regarded as a sperm donor in the eyes of the law; and

(iii) compliance with fertility centre guidelines – the applicant's control over the frozen embryos would be subject to the regulations and standards that the IVF clinic is subject to. The Guideline of the Malaysian Medical Council On Assisted Reproduction issued in 2006, has outlined strict measures regarding the storage, implantation, and disposal of embryos. This would ensure that the handling of the embryos would adhere to established medical and ethical protocols, preventing any misuse or improper management.

[78] By structuring the ruling in this manner, the court sought to balance the rights and interests of both parties. On one hand, it acknowledged the applicant's financial and emotional investment in creating and preserving the frozen embryos. On the other hand, it was obliged to safeguard the respondent from any parental or financial responsibilities that he did not consent to. This measured approach would prevent undue hardship for either party and would maintain fairness in the absence of specific legal provisions governing embryo ownership in Malaysia.

[79] At this juncture, it was essential to highlight the urgent need for legislative intervention in Malaysia regarding embryo protection and assisted reproductive technology. Currently, while the Standards for Assisted Reproductive Technology Facility (Embryology Laboratory and Operation Theatre) issued by the Ministry of Health and the Guideline of the Malaysian Medical Council On Assisted Reproduction provide some regulatory guidance, Malaysia lacks a comprehensive legal framework governing the status and use of embryos. In contrast, countries such as the United Kingdom and Germany have enacted specific laws, namely, the Human Fertilisation and Embryology Act and the Embryo Protection Act, respectively, that provide clear legal safeguards for embryos and address key ethical and legal concerns.

[80] Despite discussions on the proposed Assisted Reproductive Technique Services Act in Malaysia which began over a decade ago, no concrete legislative action has been taken. The existing Human Tissues Act 1974 is insufficient to address the complex legal and ethical challenges of assisted reproduction, highlighting the pressing need for a comprehensive legal framework.

[81] As assisted reproduction becomes increasingly common in Malaysia, it was crucial for Parliament to enact clear and comprehensive legislation that provides legal certainty and protection in this evolving field. Beyond IVF and embryo protection, the legal framework should also address critical issues related but not limited to embryo freezing and storage, posthumous use of embryos, embryo research, egg and sperm donation, embryo adoption, gestational and traditional surrogacy, parental rights and legal parentage, and even cross-border surrogacy.

Child Maintenance

[82] At the outset, it was undisputed that the Law Reform (Marriage and Divorce) Act 1976 ("the Law Reform (Marriage and Divorce) Act") does not apply in this case due to the child's illegitimate status. Under s. 2 of the Law Reform (Marriage and Divorce) Act, an illegitimate child is recognised only if he or she is the biological child of either party to the marriage and has been legally adopted under a valid adoption order. Since the child in question did not fulfil these criteria, the provisions of the Law Reform (Marriage and Divorce) Act are inapplicable. This distinction is significant as it would determine the appropriate legal framework governing the child's rights and welfare, ensuring that any legal consideration regarding custody, maintenance, and guardianship is addressed under the correct statutes rather than through the provisions of a statute that is not designed to cover such circumstances.

[83] I acknowledged that there is room for interpretation regarding whether an illegitimate child must be biologically related to either party in a marriage or if formal adoption is necessary for recognition under the Law Reform (Marriage and Divorce) Act. However, this debate holds no relevance in the present case, as the child's parents, the applicant and respondent, were not married at the time of her birth. In fact, their marriage had already been legally dissolved before the child was conceived, meaning that the child was never part of a legitimate matrimonial relationship. This crucial fact further reinforces the inapplicability of the Law Reform (Marriage and Divorce) Act in this matter, as the statute primarily governs the rights and obligations arising within a valid marital framework, which is absent in this case.

[84] Given that the Law Reform (Marriage and Divorce) Act does not govern the matter, the appropriate legal framework is the Guardianship of Infants Act 1961 ("Guardianship of Infants Act"). The Guardianship of Infants Act provides guidance on issues related to the guardianship and welfare of children, including illegitimate children. While the Law Reform (Marriage and Divorce) Act was not directly applicable to the present case, its principles remained relevant, as they reflected universal family law

concepts that prioritise the best interests of the child. The court, therefore, may still refer to these principles when making decisions regarding the child's care, custody, and overall well-being.

Whether Lump sum Was Permitted For Child Maintenance

[85] As the Law Reform (Marriage & Divorce) Act did not apply, the foundation for addressing the child's provision is found in s. 3 of the Guardianship of Infants Act, which reads:

> Section 3 - Duties of guardian of person
>
> **The guardian of the person of an infant** shall have the custody of the infant, and **shall be responsible** for his support, health and education.
>
> (emphasis added)

[86] The initial issue to be determined was whether a lump sum payment was warranted in this case. In my assessment, it was not, for the following reasons.

[87] Changing needs of the child – as the child was only three years old her financial needs may change over time due to factors such as education, healthcare, and daily living expenses. A lump sum payment may not adequately account for inflation or unforeseen costs, potentially resulting in either a shortfall in funds or an undue financial strain on the respondent. Periodic payments provide flexibility, allowing for adjustments based on the child's evolving needs and the parties' financial circumstances.

[88] Risk of over or underestimation – accurately assessing the child's financial needs for their remaining dependent years would be challenging, especially given her young age. If the amount set was too low, the applicant might need to return to court to seek additional maintenance. On the other hand, if the amount awarded was too high, the respondent could face an undue financial burden without the flexibility to adjust to changing circumstances. In this case, I found the sum requested by the applicant to be excessive and unreasonable given the child's age, ultimately amounting to an overestimation.

[89] Risk of mismanagement of funds – if the applicant were to be granted a substantial lump sum upfront, there would be a significant risk that the funds might not be managed prudently to sustain the child's needs throughout their upbringing. Both the court and the respondent expressed concerns that such a large sum could be misused or diverted for purposes unrelated to the child's welfare. The respondent, in particular, argued that the amount requested by the applicant was, in reality, intended for her personal use, but disguised as expenses for the child. In contrast, periodic payments offer a more structured and sustainable approach, ensuring that financial support remains available and is allocated appropriately as the child's needs evolve over time.

[90] Financial hardship for the respondent – a lump sum payment may place significant financial strain on the paying parent, particularly if they do not have immediate access to such a large amount. It may require liquidating assets or lead to financial instability, potentially making it more difficult for the paying parent to provide additional support if needed in the future. Periodic payments, on the other hand, allow for a more manageable distribution of financial responsibility over time. In this case, the respondent had stated that he did not have the necessary funds to meet the applicant's demand of RM1,440,000. Given these circumstances, I found that imposing such a substantial sum would be an unfair financial burden on the respondent.

[91] In any event, lump sum payment for child maintenance is not permitted by s. 19A of the Guardianship of Infants Act, which reads:

> Section 19A - Dispute between joint guardians
>
> (1) If two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper.
>
> (2) **The powers of the court** under subsection (1) shall include the power to
>
> (a) make such order regarding the custody of the infant and the right of access of the parents or of either of them to the infant as, having regard to the welfare of the infant, the court thinks fit;
>
> (b) **order the parents or either of them to pay such periodical sums** towards the maintenance or education of the infant as the court may consider reasonable having regard to the means of such parents or parent; and
>
> (c) vary or discharge any order previously made under this section.
>
> (emphasis added)

[92] Based on the aforesaid reasons, I had to disallow the applicant's request for lump sum child maintenance.

Whether Child Maintenance Of Monthly RM7,500 Was Justified

[93] Although I had rejected the applicant's request for a lump sum payment for child maintenance, it was imperative for the respondent to pay monthly maintenance for the child.

[94] The applicant claimed that it cost a monthly amount of RM7,500 to raise the child, whereas the respondent argued that RM1,500 was adequate.

[95] Bearing in mind that the child was only three years old, the applicant's claim for RM7,500 monthly was inflated, unnecessary and unreasonable for the following reasons.

[96] The applicant's expense claims were excessive, particularly concerning the costs attributed to their three-year-old child. A notable example is the request for RM12,916 to cover pre-nursery and kindergarten fees. Given the child's young age, this amount was considered unreasonable. Typically, educational costs for a child of this age are lower, as formal schooling has not yet begun. The claimed amount suggests either enrolment in an exceptionally high-cost institution or an overestimation of necessary expenses. This raises concerns about the accuracy and necessity of the financial request, leading to scrutiny of the overall claim.

[97] Furthermore, despite presenting herself as a full-time stay-at-home mother, the applicant sought reimbursement for babysitter fees totalling RM519 per month. Given that she had no employment obligations requiring full-time childcare, this expense was unjustified. Allowing her to claim such costs would amount to an unfair advantage, as it contradicted her stated role.

[98] The respondent had also expressed concerns about the applicant making unilateral financial decisions without his consent, particularly regarding medical and education expenses. He argued that such decisions had significant financial implications and should have been made jointly as co-parents. One specific issue raised was the applicant's decision to seek medical treatment at private healthcare facilities instead of Government hospitals. While Government hospitals offer more affordable healthcare options, the applicant's choice of private treatment led to substantially higher medical costs. The respondent contended that, given the financial impact, he should have been consulted before these expenses were incurred. He emphasised that as a co-parent, he had both a right and a responsibility to be involved in decisions that directly affected their child's welfare and financial well-being.

[99] Beyond medical expenses, the respondent was also concerned about educational costs, suggesting that the applicant may enrol the child in programs or schools without prior discussion. He maintained that major financial commitments, especially those affecting the child's future, should be made through mutual agreement rather than unilateral decisions.

[100] Furthermore, the respondent highlighted that several receipts submitted by the applicant included expenditures on high-end dining, luxury groceries, and shopping, which he argued were personal expenses rather than legitimate child-related costs.

[101] He contended that dining at upscale restaurants went beyond reasonable meal expenses for a child and instead reflected discretionary spending for the applicant's own lifestyle. Similarly, purchases of premium groceries, such as imported delicacies and gourmet items, were not necessities for the child's well-being but rather indulgences that should not be categorised as child-related expenses.

[102] Another concern was the inclusion of personal expenses within the applicant's claims for child maintenance. The respondent pointed out that receipts from Village Grocer and Lavender Cafe appeared to reflect purchases for the applicant's own use rather than necessities for the child. Similarly, the applicant claimed RM3,928.87 for Shopee purchases made between 2022 and 2024, yet failed to provide a clear breakdown demonstrating that these expenses were solely for the child. The lack of transparency in these claims casts doubt on their legitimacy and fairness, raising concerns that the applicant may have been misrepresenting personal expenditures as child-related costs.

[103] Furthermore, the respondent contended that some receipts adduced as evidence were unclear, illegible, or even duplicated, such as the Bee Happy Child Specialist Clinic bill, which appeared twice with the same receipt number and amount. These discrepancies further reinforced the respondent's claim against the court.

[104] The respondent had also contended that this monthly amount was excessive, especially given the applicant's financial standing, which included funds of more than RM3 million in April 2022 that the petitioner had received and retained from the sale of their matrimonial home.

[105] While I did not accept the respondent's argument that the sale of the marital home should be considered part of child maintenance, I nonetheless found the applicant's claim for a monthly amount of RM7,500 for the child to be excessive and unreasonable.

[106] Moreover, it is important to highlight that the applicant, who holds a doctorate in cognitive and behavioural therapy, has the capacity to generate income and should, therefore, contribute to the child's financial support. This principle is reinforced by s. 19A of the Guardianship of Infants Act, which empowers the court to order both parents to provide periodic financial contributions for the child's maintenance. This principle is echoed in s. 93(2) of the Law Reform (Marriage and Divorce) Act, which reads:

> Section 93 - Power for court to order maintenance for children
>
> (2) The court shall have the **corresponding power to order a woman to pay or contribute towards the maintenance of her child** where it is satisfied that having regard to her means it is reasonable so to order.
>
> (emphasis added)

[107] Accordingly, I was of the view that the applicant should share equal responsibility in ensuring the child's financial well-being.

[108] In my view, the reasonable cost of raising a three-year-old child falls between a monthly amount of RM2,500 and RM3,000, taking into account basic necessities such as food, clothing, healthcare, education, and other essential expenses. Given this, I ordered the respondent to contribute a monthly sum of RM1,500, which must be deposited directly into the applicant's account by the seventh of each month. This amount shall be subject to an annual increment of 10%.

[109] This financial obligation shall continue until the child reaches the age of 18 or completes her tertiary education for her first degree, ensuring that she receives consistent financial support throughout her formative years and higher education. Although not directly applicable, s. 95 of the Law Reform (Marriage and Divorce) Act echoes this principle. The provision reads:

> Section 95 - Duration of orders for custody and maintenance
>
> Except where an order for custody or **maintenance of a child** is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the child of the age of eighteen years or where the child is under physical or mental disability, or **is pursuing** further or higher education or training, on the ceasing of such disability or **completion of such further or higher education or training**, whichever is the later.
>
> (emphasis added)

[110] Since the applicant was granted sole guardianship, custody, care, and control of the child, she holds the exclusive authority to make decisions regarding the child's education and healthcare without the need to consult the respondent. As a result, it would be unfair to expect the respondent to bear financial responsibility for these expenses when he has no say in the choices being made. Given this unilateral decision-making power, the annual 10% increment in maintenance is intended to serve as compensation for the child's education and healthcare needs, ensuring that the respondent's financial contribution remained fair and reasonable while allowing the applicant the flexibility to make independent decisions regarding the child's well-being.

Access - Whether The Respondent Was Entitled To Access To The Child

[111] Although the respondent demonstrated little interest in actively fulfilling the role of a father, he informed the court that he would still like the opportunity to see the child occasionally. As such, I decided that access should be granted in the following manner:

(i) for the next six months from the date this decision was delivered (21 February 2025) until 20 August 2025, the respondent will be granted supervised physical access from 11am to 3pm every alternate Saturday and Sunday at a place to be agreed to by the parties;

(ii) from 21 August 2025 onwards, the respondent will be granted unsupervised physical access from 11am to 3pm every alternate Saturday and Sunday.

[112] In my view, the respondent's request for such access was reasonable and fair.

Conclusion

[113] In the upshot, based on the aforesaid reasons, and after careful scrutiny of all the evidence before this court, including written and oral submissions of both parties, the application was allowed partially, in that the respondent was ordered to pay a monthly child maintenance and the applicant was given control of the frozen embryos.